

Ownership of Leasehold Improvements



By Brian Madigan LL.B.

There are some basic common law principles relating to ownership of leasehold improvements:

- "Whatever is fixed to the freehold of land becomes part of it"
- buildings constructed and fixtures placed on leased land become part of the freehold property of the landlord
- This takes priority over the landlord and Tenant relationship
- The fixtures (only as part of the land) are leased to the tenant
- The landlord and tenant cannot by agreement change this result
- This occurs automatically by operation of law
- The parties can, however, make an agreement regarding the rights in buildings or fixtures effective only as between themselves
- Such an agreement will not affect the rights of third parties
- Once a building has become affixed to the land and therefore the property of the landlord, the landlord may grant or convey the building or an interest in it to someone else, and the land may be owned separately from a building on the land.

These basic principles of law are very important considerations when decisions are required about a landlord's right of distraint, priority disputes involving chattel security for financing, taxation and by-law compliance issues.

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